

H.R. 4788. An act to amend the United States Grain Standards Act to extend the authority of the Secretary of Agriculture to collect fees to cover the cost of services performed under the Act, to extend the authorization of appropriations for the Act, and to improve the administration of the Act.

H.R. 4868. An act to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

Under the authority of the order of the Senate of October 30, 2000, at 8 p.m., a message from the House of Representatives, delivered by Ms. Kevie Niland, one of its reading clerks, announced that the House has passed the following joint resolution:

H.J. Res. 121. Joint resolution making further continuing appropriations for the fiscal year 2001, and for other purposes.

#### ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 121. Joint resolution making further continuing appropriations for the fiscal year 2001, and for other purposes.

The enrolled joint resolution was signed subsequently by the President pro tempore (Mr. THURMOND).

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-11384. A communication from the Director of the Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled "Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve" (RIN2900-AJ88) received on October 26, 2000; to the Committee on Veterans' Affairs.

EC-11385. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "John D. Shea v. Commissioner" (115 T.C. No. 8) received on October 27, 2000; to the Committee on Finance.

EC-11386. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Rev. Rul. 2000-51-BLS-LIFO Department Store Indexes—September 2000" (Rev. Rul. 2000-51) received on October 27, 2000; to the Committee on Finance.

EC-11387. A communication from the Assistant Secretary for Policy, Management and Budget, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" (RIN1090-AA64) received on October 26, 2000; to the Committee on Energy and Natural Resources.

EC-11388. A communication from the General Counsel, Architectural and Transportation Barriers Compliance Board, transmitting, pursuant to law, the report of a rule entitled "Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas" (RIN3014-AA21) received on October 23, 2000; to the Committee on Environment and Public Works.

EC-11389. A communication from the Alternate OSD Federal Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "TRICARE Prime Enrollment" received on October 26, 2000; to the Committee on Armed Services.

EC-11390. A communication from the Director of the Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Update of Small Business Specialist Functions" (DFARS Case 2000-D021) received on October 26, 2000; to the Committee on Armed Services.

EC-11391. A communication from the Chief, Military Justice Division, Air Force Legal Services Agency, transmitting, pursuant to law, the report of a rule entitled "Delivery of Personnel to United States Civilian Authorities for Trial" (32 CFR 884) received on October 26, 2000; to the Committee on Armed Services.

EC-11392. A communication from the General Counsel, National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "12 CFR Part 747 Civil Monetary Penalty Inflation Adjustment" received on October 26, 2000; to the Committee on Banking, Housing, and Urban Affairs.

EC-11393. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "National Flood Insurance Program (NFIP); Insurance and Rates 65 FR 60759 10/12/2000" (RIN3067-AD01) received on October 26, 2000; to the Committee on Banking, Housing, and Urban Affairs.

EC-11394. A communication from the Secretary of the Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Delivery of Proxy Statements and Information Statements to Households" (RIN3235-AH66) received on October 27, 2000; to the Committee on Banking, Housing, and Urban Affairs.

EC-11395. A communication from the Under Secretary of Food, Nutrition, and Consumer Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (RIN0584-AC41) received on October 26, 2000; to the Committee on Agriculture, Nutrition, and Forestry.

EC-11396. A communication from the Associate Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Kiwi fruit Grown in California; Decreased Assessment Rate" (Docket Number: FV00-920-3 FIR) received on October 27, 2000; to the Committee on Agriculture, Nutrition, and Forestry.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2665: A bill to establish a streamlined process to enable the Navajo Nation to lease trust lands without having to obtain the approval of the Secretary of the Interior of individual leases, except leases for exploration, development, or extraction of any mineral resources (Rept. No. 106-511).

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CRAIG:

S. 3265. A bill to amend the Internal Revenue Code of 1986 to clarify treatment of employee stock purchase plans; to the Committee on Finance.

By Mr. BREAUX:

S. 3266. A bill to amend the Delta Development Act to expand the area covered by the Lower Mississippi Delta Development Commission to include Natchitoches Parish, Louisiana; to the Committee on Environment and Public Works.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself and Mr. GRAMM):

S. Con. Res. 157. A concurrent resolution expressing the sense of the Congress that the Government of Mexico should adhere to the terms of the 1944 Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande Treaty between the United States and Mexico; to the Committee on Foreign Relations.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. BINGAMAN, Mr. CONRAD, and Mrs. HUTCHISON):

S. Con. Res. 158. A concurrent resolution expressing the sense of Congress regarding appropriate actions of the United States Government to facilitate the settlement of claims of former members of the Armed Forces against Japanese companies that profited from the slave labor that those personnel were forced to perform for those companies as prisoners of war of Japan during World War II; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Mr. CRAIG:

S. 3265. A bill to amend the Internal Revenue Code of 1986 to clarify treatment of employee stock purchase plans; to the Committee on Finance.

#### WORKER INVESTMENT PROTECTION ACT

Mr. CRAIG. Mr. President, I rise to introduce important legislation designed to clarify the tax treatment of employee stock purchase plans (ESPPs). The Worker Investment Protection Act provides this needed clarification.

Employee stock purchase plans are a common tool used by employers to allow rank-and-file employees to set aside part of their paychecks to purchase the company's stock. The tax code provides incentives for employees to participate in ESPPs to encourage employee ownership. This legislation is necessary because in selected cases around the country, the Internal Revenue Service (IRS) has begun to act contrary to almost 30 years of published policy, and is attempting to collect income taxes and payroll taxes on

ESPPs. For three decades, the published IRS ruling position (Rev. Rul. 71-52) has been that transactions under qualified stock option plans do not give rise to income that is subject to employment taxes. In Notice 87-49, the IRS extended the principles of this ruling to incentive stock options (ISOs). In a series of private letter rulings, the IRS applied the same position to ESPP transactions, which are generally governed by the same Code provisions as qualified and incentive stock options. The IRS has periodically indicated that it may reconsider the positions in Rev. Rul. 71-52 and Notice 87-49, but no further official guidance has been forthcoming.

Rev. Rul. 71-52 and Notice 87-49 remain the best statements of current law and represent the only publicly published IRS position on current law. Nevertheless, IRS agents have selectively begun seeking to collect retroactive assessments of employment taxes, including withholdings, from employers who reasonably relied on these rulings and did not subject transactions under ESPPs to such taxes.

The IRS's actions in this area are inconsistent with long-standing published IRS positions. This legislation would clarify that any income arising from transactions under ISOs and ESPPs, either upon grant or exercise, or qualifying and disqualifying disposition, is not subject to employment taxes or federal income tax withholding.

ESPPs are the primary vehicle through which rank and file workers purchase stock in their companies. However, additional tax liabilities on employees and high administrative costs for plan administration will discourage employers from offering these programs that encourage broad-based employee stock ownership. Imposing employment taxes on otherwise non-taxable transactions will weaken incentives for employees to participate. The taxes involved are very modest when compared with the compliance costs and the unfair burdens on rank-and-file workers generally.

This legislation will clarify what is sensible tax policy regarding ESPPs. More important, it will empower workers during their working years because they will be both employees and owners of the company as well as additional providers of their own retirement security. Furthermore, it will thwart the arbitrary and selective IRS actions, contrary to all previously published Treasury and IRS policies.

I am introducing the Worker Investment Protection Act in the closing days of the 106th Congress with the hope that the Secretary of the Treasury, Lawrence Summers, will clarify longstanding IRS policy, and therefore preclude the need for this legislation. If not, I intend to pursue this legislation aggressively during the next session of Congress. I urge my colleagues to support the Worker Investment Protection Act.

Mr. President, I ask unanimous consent the attached letters from the American Electronic Association, Micron Technology, and the National Association of Manufacturers in support of my efforts regarding employee stock purchase plans be made a part of the RECORD, immediately following my remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN ELECTRONICS ASSOCIATION,  
*Washington, DC, September 20, 2000.*

Re tax withholding on employee stock purchase plans.

Hon. LARRY CRAIG,  
*U.S. Senate,  
Washington, DC.*

DEAR SENATOR CRAIG: On behalf of the more than 3,000 small, medium and large company members of the American Electronics Association (AEA), I am writing to express our serious concern over the issue of payroll tax withholding on stock obtained from an employee stock purchase plan (ESPP) qualified under section 423 of the Internal Revenue Code. Many of our member companies' ESPPs have been an important part of their overall compensation packages, benefiting over hundreds of thousands high-tech employees.

We are writing to express our strong support of your effort to amend the Community Renewal and New Markets Act of 2000 to ensure that purchases from Employee Stock Purchase Plans ("ESPP") continue to enjoy the favorable tax treatment that was intended.

AeA understands that the favorable tax treatment of equity ownership by employees is in jeopardy. The Treasury is working on guidance that could reverse 30 years of IRS precedent and business practice in this area by imposing employment taxes when employees exercise ESPP options. There simply is no reason to impose employment taxes on amounts that are not subject to current income tax, and no law has changed that validates the IRS' change in position. Sound tax policy supports rules that encourage companies to continue these plans and does not weaken the incentives for rank-and-file employees to participate in them.

We support your amendment to the Community Renewal and New Markets Act of 2000 legislation that would reaffirm the positions that taxpayers have been following in good faith in this area, consistent with Congressional intent. Please feel free to contact me or AEA's Tax Counsel, Caroline Graves Hurley, if we can provide you any additional information on this matter. We appreciate your attention to this important issue.

Sincerely,

JOHN P. PALAFOUTAS,  
*Sr. Vice President.*

MICRON TECHNOLOGY, INC.,  
*Boise, ID, September 20, 2000.*

Hon. LARRY CRAIG,  
*U.S. Senate,  
Washington, DC.*

DEAR MR. CRAIG: Micron Technology is writing to seek your support of legislation that would confirm the long-standing treatment under the tax code of Employee Stock Purchase Plans ("ESPPs"). This issue is very important to companies like ours who encourage employee-ownership.

To provide some background, an employer is generally required to withhold income and employment taxes on "wages" paid to an employee. However, the IRS ruled in 1971 that the acquisition of stock by an employee

pursuant to a qualified stock option does not result in the payment of "wages" and, therefore, is not subject to income tax withholding and employment taxes. Employers and the IRS have followed this principles for almost 30 years.

Recently, and without proper notification to taxpayers, the IRS changed its position and instructed its auditors to retroactively impose deficiency assessments on companies that failed to withhold income and employment taxes on the benefits afforded by qualified ESPPs.

There are compelling legal and policy reasons to support the position that ESPP transactions are exempt from employment taxes and Federal income tax withholding. The IRS's change of position will discourage broad-based employee stock ownership; will weaken the incentives for workers to participate in these programs; and will increase corporate compliance costs far in excess of the potential tax amounts involved.

Sincerely,

RODERIC W. LEWIS,  
*Vice President and General Counsel.*

NATIONAL ASSOCIATION  
OF MANUFACTURERS,

*Washington, DC, September 20, 2000.*

Hon. WILLIAM V. ROTH,  
*Chairman, Committee on Finance,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: On behalf of the National Association of Manufacturers (NAM), the "18 million people who make things in America" and our 14,000 small, mid-sized and large member companies, I urge you to take action this year on a proposal to clarify the tax treatment of employee stock purchase plans (ESPPs). Specifically, I encourage you to include in your Chairman's Mark of the Community Renewal and New Markets Act of 2000 an ESPP amendment officer by committee member Larry Craig.

The tax code currently includes incentives for ESPPs that employees to purchase company stock at a discount of up to 15%. For nearly 30 years, IRS has taken the position in published guidance that ESPP transactions are exempt from employment taxes and federal income tax withholding. However, over the past two years, IRS agents have sought to collect employment taxes from employers who did not subject these transactions to such taxes. The amendment offered by Sen. Craig confirms that any income from ESPP transactions is not subject to employment taxes or federal income tax withholding.

Based on our experience, ESPPs motivate employees and create entrepreneurial zeal by giving workers a stake in their company's future. In contrast, the additional tax liabilities and administrative costs of IRS' change in position will discourage employers from offering these programs. At the same time, imposing employment taxes on ESPP transactions will confuse employees and weaken incentives for them to participate. The Craig amendment will ensure that employers continue to offer ESPPs and that employees continue to benefit from company ownership. Thank you in advance for supporting this important initiative.

Sincerely,

DOROTHY COLEMAN,  
*Vice President, Tax Policy.*

#### ADDITIONAL COSPONSORS

S. 751

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 751, a bill to combat nursing